

**COMPLAINT INVESTIGATION SUMMARY**

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|------------------------------|--------------------|
| COMPLAINT NUMBER:            | 2170.05            |
| COMPLAINT INVESTIGATOR:      | Sally Cook         |
| DATE OF COMPLAINT:           | September 3, 2004  |
| DATE OF REPORT:              | September 30, 2004 |
| REQUEST FOR RECONSIDERATION: | no                 |
| DATE OF CLOSURE:             | November 19, 2004  |

**COMPLAINT ISSUES:**

Whether the Salem Community Schools and the South Central Area Special Education Cooperative violated:

511 IAC 7-18-2 by failing to provide a free appropriate public education to the student since January, 2004, by denying or delaying the student's enrollment.

511 IAC 7-27-4(a)(5) by failing to convene the case conference committee (CCC) within ten instructional days of the enrollment date of a student who had been receiving special education services in another state, and 511 IAC 7-27-7(c)(2) by failing to provide special education and related services no later than ten instructional days after the CCC meeting for a newly-enrolled student who had received special education services in another state.

**FINDINGS OF FACT:**

1. The Student has been identified as having multiple disabilities and determined eligible for special education and related services.
2. On September 26, 2001, the Student was determined eligible for early childhood special education services in another state. On November 24, 2003, the Student's Admissions and Release Committee (ARC) reconvened following the Student's absence from school for a period of almost two years. The ARC amended the Student's IEP and changed the placement to a special education classroom in a local, separate special education school. As amended, the IEP was initiated December 1, 2003, and was to extend through November 24, 2004. When the Student attended school in the other state for a few weeks in December, 2003, the Student was not separate from other students with disabilities.
3. By the end of December of 2003, the Student and family had moved to Indiana. In January, 2004, the Parent contacted the School Corporation to find out where to enroll the Student. The Parent was referred to the office of the special education planning district (the Interlocal). Although the Student was five years old as of January, 2004, the Student was not old enough to enroll in a kindergarten program in Indiana, as the Student was not five years of age on July 1, 2003. Early childhood special education programs are operated by or through the Interlocal, not the School Corporation. (Collectively, the School Corporation and the Interlocal are the School.)
4. On January 19, 2004, the School's four-person team conducted a home visit at the Student's home, including an interview with the Student's Parent.

5. On January 26, 2004, the School conducted a staffing meeting in which seven persons participated. The Student's eligibility for special education and related services was not in question, and the Staffing team considered possible placements. A focus of the Staffing was the Student's infectious medical condition that is sometimes active (and sometimes not active). The Parent did not attend the Staffing, and there is no record that the Parent was invited.
6. On February 27, 2004, the School received the Student's educational records from the other state. The Parent did not actively seek services for the Student during February, 2004, as the Student was ill. The Parent contacted the Interlocal again in March, 2004.
7. On April 8, 2004, the Student's case conference committee (CCC) convened. The Notification form and the Case Conference Summary form incorrectly identify the meeting as an "Initial Conference," rather than a "Move-in from: \_\_\_\_." The CCC neither adopted the IEP nor developed a new IEP. The Student's eligibility was determined, but the Student's placement was "to be determined following evaluation, medical test, and gathering of additional information." The CCC Report includes a recommendation or requirement that the Parent would have certain medical tests performed. However, as a part of the CCC decision-making, the School did not offer to pay for the tests as a related service under 511 IAC 7-28-1(e) for medical services for the purpose of diagnosis and evaluation. On May 9 and 14, 2004, an education evaluation of the Student was conducted. The CCC did not reconvene before the end of the 2003-2004 school year.
8. No services were offered or provided to the Student during the 2003-2004 school year. Homebased or homebound services were not offered. As early as January 19, 2004, the Parent had made known an objection to homebased or homebound services.
9. The first instructional day of the 2004-2005 school year was August 16, 2004. As of that date, the Student did not have an IEP in effect, other than the IEP from the other state that called for the Student to be in a special education classroom with other students.
10. On August 18, 2004, the Student's CCC reconvened and developed the Student's IEP for the period beginning August 19, 2004, and ending August 19, 2005. The Parent again made it clear that consent for homebound services would not be given. The School proposed, and the Parent consented to, a temporary placement in a room in the local school with no other students (Separate Room), with an instructional assistant and a video camera for "insight supervision" by a special education teacher. "Insight supervision" referred to the requirement that a paraprofessional providing instructional services be in the line-of-sight of a licensed teacher. The placement was to begin September 1, 2004, pending receipt of a statement from the Student's physician. The School agreed to pay for additional medical tests and to assist with transportation for the testing. Inservice training that had been cancelled due to the unavailability of the presenter was rescheduled for August 30, 2004.
11. On September 1, 2004, the Student began attending school in the Separate Room, with an instructional assistant. A camera was installed in the Separate Room to transmit a series of still pictures to the special education teacher's computer. By clicking from picture to picture, the special education teacher could observe the instructional assistant and the Student. As there was no audio component, the special education teacher could not hear communications between the instructional assistant and the Student. The Student and instructional assistant were not entirely alone, as various services providers (itinerant special education teacher and related services providers) came to the Separate Room to conduct assessments and provide services. The Student was in the Separate Room for 11 instructional days, without contact with other students, although the Student may have been able to overhear other students in the hallway or nearby rooms.

12. Although the Parent alleges that there was an understanding that audio equipment would be utilized so that the Student could hear the teacher and other students in the special education classroom, and although the School acknowledges that an audio connection may have been discussed informally some days after the CCC meeting, the CCC did not decide to set up an audio link between the Separate Room and the special education classroom. It is undisputed that the video camera was to be in the Separate Room, not in the special education classroom.
13. On September 16, 2004, the Student's CCC reconvened, made various revisions to the IEP including the addition/revision of goals, and changed the Student's placement to a special education classroom, beginning September 20, 2004. The Student was absent on September 20, 2004, and began participating in the special education classroom on September 21, 2004. The CCC also agreed that, if the Student's infectious medical condition were to become active in the future, homebound services would be provided. The Parent consented to the revised IEP and placement.

## **CONCLUSIONS:**

1. Findings of Fact #7, #8, and #9 indicate that the School denied the Student a free appropriate public education to the Student prior to August 18, 2004, and Finding of Fact #10 indicates that the School delayed the provision of a free appropriate public education to the Student during the period from August 18, 2004, through August 31, 2004. The provision of services during the period from September 1, 2004 to September 20, 2004, as described in Findings of Fact #11 and #12, fails to meet the requirements of public education generally and a free appropriate public education for a student with a disability, whether or not a parent has given consent. Therefore, a violation of 511 IAC 7-18-2 is found with respect to the failure to provide a free appropriate public education prior to September 20, 2004.
2. For the purpose of the timeline in 511 IAC 7-27-4(a)(5), Findings of Fact #3 and #4 indicate that the Student was enrolled (or deemed enrolled) by January 19, 2004, and Findings of Fact #7 indicates that the School failed to convene the CCC within ten instructional days from the date of enrollment of the Student who had been receiving special education services in another state, as indicated by Finding of Fact #2. The Staffing meeting described in Finding of Fact #5, though timely, was not a CCC meeting. Although Finding of Fact #6 indicates that there was a delay in receiving the Student's educational records and another reason for delaying the provision of services, the timeline of 511 IAC 27-4(a)(5) governs the CCC's offer of services and is not conditional upon the receipt of records or other student-specific factors, particularly when the Student's eligibility for services is not disputed, as indicated by Finding of Fact #5. Findings of Fact #7 and #8 indicate that the School failed to provide special education and related services no later than ten instructional days after the CCC meeting on April 8, 2004. Therefore, a violation of 511 IAC 7-27-4(a)(5) is found, and a violation of 511 IAC 7-27-7(c)(2) is found.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

Salem Community Schools and the South Central Area Special Education Cooperative shall:

1. Reconvene the Student's CCC to consider the compensatory services for the Student, for the denial of services during the 2003-2004 school year from and after March 1, 2004, and the delay/denial of services at the beginning of the 2004-2005 school year, from August 16, 2004, through September 19, 2004.
2. Develop and implement forms and procedures that are consistent with 511 IAC 7-27-4(a)(5) and 511 IAC 7-27-7(c)(2), including

- a. If necessary, the revision of enrollment procedures to document enrollment of early childhood students with disabilities;
- b. If necessary, the revision of procedures for sending for educational records from other states or districts; and
- c. The development of a system for tracking the date of enrollment, date of the first local CCC meeting, and date of initiation of services for each newly-enrolled student who had received special education services in another state or another district within this state.

Documentation of compliance (consisting of the CCC Report/IEP and the forms/procedures) shall be submitted to the Indiana Department of Education, Division of Exceptional Learners, by November 12, 2004.